

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
STEVEN B. JACOBS }

For Appellant: Steven B. Jacobs, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

Jacqueline W. Martins
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Steven B. Jacobs against a proposed assessment of additional personal income tax in the amount of \$97.82 for the year 1974, plus interest.

Appeal of Steven B. Jacobs

The issues presented are: (1) whether appellant is entitled to claim head of household status for the taxable year 1974, and (2) whether appellant is liable for interest on the deficiency assessment..

Appellant filed his 1974 personal income tax return as a head of household, claiming Denise D. Schultz as his qualifying dependent. Appellant provided over half of Ms. Schultz's support during 1974, but was not related to her other than as a friend. Respondent disallowed appellant's claimed head of household status on the ground that Ms. Schultz was not a qualifying dependent for such purpose because she was not related to appellant. However, pursuant to Revenue and Taxation Code section 17054, subdivision (c), respondent allowed appellant an \$8.00 dependent exemption credit for Ms. Schultz. Appellant protested both the deficiency assessment and the interest thereon, alleging that respondent's instructions concerning head of household status were incomplete and that one of respondent's employees advised him to claim head of household status.. Upon review, respondent affirmed its action and this appeal followed.

The facts of this case are substantially similar to those presented in several previous appeals to this board. (See Appeal of Robert James Desmond, Cal. St. Bd. of Equal., Dec. 6, 1977; Appeal of Rebecca Smith Randolph, Cal. St. Bd. of Equal., Aug. 16, 1977; Appeal of Amy M. Yamachi, Cal. St. Bd. of Equal., June 28, 1977; Appeal of Judith A. Marshall, Cal. St. Bd. of Equal., May 10, 1977; Appeal of Stephen M. Padwa, Cal. St. Bd. of Equal., May 10, 1977.) In those cases, we sustained respondent's action and held that Revenue and Taxation Code section 17044 precludes a taxpayer from being considered a head of household when the individual otherwise qualifying as a dependent of the taxpayer is unrelated by blood or marriage.

We also sustained respondent's action in the Yamachi appeal notwithstanding the taxpayer's argument which was in the nature of estoppel. There the taxpayer argued, as does appellant here, that respondent's instructions were incomplete. After reviewing the nature of estoppel, we determined that the taxpayer did not rely to her detriment in selecting her living arrangement during 1974, because respondent's instructions were not issued until 1975. The inability of the taxpayer to establish detrimental reliance precluded an application of the doctrine of estoppel. (See also Appeal of Virgil E. and Izora Gamble, Cal. St. Bd. of Equal., May 4, 1976, for the same result where the taxpayers allegedly relied on erroneous statements made by employees of respondent.)

Finally, Revenue and Taxation Code section 18688 provides that interest on a deficiency shall be assessed from the date prescribed for payment of the tax until the date the tax is paid. This is a clear statutory mandate which this board is not empowered to waive. (See Appeal of Amy M. Yamachi, *supra*.)

O R D E R

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Steven B. Jacobs against a proposed assessment of additional personal income tax in the amount of \$97.82 for the year 1974, plus interest, be and the same is hereby sustained.

Done at Sacramento, California, this 27th day
of September, 1978, by the State Board of Equalization.

Scott Perry, Chairman
John G. ..., Member
John ..., Member
William ..., Member